

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
XU CHEN, JIA JUN XU, JIAN FENG LIU,

Plaintiffs,

-against-

ORDER
15-CV-3073 (SIL)

ZAZA JAPAN INC., doing business as Zaza Japan
Asian Bistro & Hibachi, DAVID ZHU, ZHONG
YONG LIN, and JOHN DOES AND JANE DOES #
1-10,

Defendants.

-----x
LOCKE, Magistrate Judge:

On June 29, 2016, the parties submitted a joint motion seeking approval of a Settlement Agreement in this Fair Labor Standards Act action. *See* Docket Entry (“DE”) [27]. At an August 16, 2016 hearing, the Court denied the motion without prejudice because the Settlement Agreement contained impermissible release and non-disparagement provisions. *See* DE [29]. Thereafter, on August 31, 2016, the parties submitted a revised Settlement Agreement and requested Court approval. DE [30]. Upon review of the revised Settlement Agreement, the Court finds that the non-disparagement clause remains improper as it does not contain a carve-out for truthful statements. *See Lopez v. Nights of Cabiria, LLC*, 96 F. Supp. 3d 170, 180, n. 65 (S.D.N.Y. 2015) (stating that a non-disparagement clause “must include a carve-out for truthful statements about plaintiffs’ experience litigating their case.”). Therefore, the revised Settlement Agreement fails to comply with *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015).

Accordingly, the parties' request for Court approval of the revised Settlement Agreement is again denied without prejudice. The parties may re-submit a second revised Settlement Agreement, executed by all parties, in accordance with this Order for the Court's review.

Dated: Central Islip, New York
September 1, 2016

s/ Steven I. Locke
STEVEN I. LOCKE
United States Magistrate Judge